

1984 WL 249789 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 17, 1984

***1 RE: Authority of Registered Land Surveyors to Perform Drainage Design Incidental to Survey Work**

Dr. B. L. Baker
Secretary
State Board of Architectural Examiners
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Dear Dr. Baker:

You have requested this office's legal opinion as to whether registered land surveyors in South Carolina may perform drainage design incidental to subdivision layout work. The 'practice of land surveying' is defined by [Section 40-21-10\(7\) of the South Carolina Code of Laws \(1976\)](#) to include:

... measuring and locating lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, with underground workings, or on the beds or bodies of water for the purpose of determining areas and volumes, for the monumenting of property boundaries and for the platting and laying out of lands and subdivisions, including the topographic alignment and grades of streets and for the preparation of maps, plats, and property descriptions that represent the surveys;

As you noted in your letter, the definition does not specifically permit surveyors to perform incidental design survey work. Therefore, if such authority exists, it would have to be inferred from the specific authority granted.

To better understand what land surveyors are generally permitted to do, I made a survey of the statutes of all fifty states. It appears that the following activities are commonly permitted in all states:

1. The determination of the location or relocation of land boundaries, lines, corners and monuments;
2. The restoration, rehabilitation, and preservation of land survey monuments and bench marks;
3. The preparation of maps or recorded plats showing the shape, areas, and topography of tracts of land and their subdivision into smaller tracts;
4. The preparation of maps or recorded plats showing the location of streets, roads, rights-of-way, easements and alignments;
5. The preparation of original descriptions of real property.

Only seven states (Delaware, Indiana, Maryland, North Carolina, Tennessee, Vermont and Virginia) specifically provide by statute that land surveyors can perform drainage design work:

'Practice of land surveying' shall further include, but not be limited to, the design, preparation and furnishing of subdivision plans, condominium plans, land development plans, sedimentation and erosion control plans, grading plans, site plans, record plats and horizontal alignments, profiles and typical sections for roads, streets, utilities, sanitary sewers and storm drainage systems. This shall not be construed so as to permit the professional land surveyor to include the design of sewage disposal

stations, bridges or to prepare plans for the construction of engineering and architectural projects. [24 Delaware Code Annotated § 2701\(3\) \(1982\)](#), as amended.

'Practice of land surveying' includes for and within subdivisions being laid out or having been laid out by the land surveyor, the preparation and furnishing of plats, plans, and profiles for roads, storm drainage, sanitary sewer extensions, and the locations of residences or dwellings where the plans and profiles were prepared by or under the direction of a land surveyor as defined in this chapter . . . This shall not be construed so as to permit the land surveyor to include the design and construction of sewage disposal stations, lift stations, commercial buildings, pumping stations, or bridges or to prepare engineering plans for the construction of engineering projects. Section 25-31-1-2, Indiana Statutes Annotated (1984), as amended.

***2** . . . setting grades and determining drainage of streets and roads, and providing for storm drainage systems if the systems do not require the hydraulic design or structural design of system components . . . Art. 56, § 330 Ann. Code of Maryland (1983).

'Practice of land surveying' by registered land surveyors shall mean any service work . . . including the topography, alignment and grades of streets and incidental drainage within the subdivision. . . . [§ 89C-3, General Statutes of North Carolina \(1983\)](#).

The term 'practice of land surveying,' as used in this chapter, shall mean any service of work . . . including the topography, drainage, alignment and grades of streets . . . [§ 62-18-102 Tennessee Code Annotated \(1983\)](#).

The term 'land surveying,' as used in this chapter, shall mean . . . surveying for grading, street layout and locating minor drainage structure within a subdivision . . . [T. 26 § 2501\(b\) Vermont Statutes Annotated \(1984\)](#).

'Land surveying' includes . . . the laying out and plotting of roads, streets and sidewalks, topography and contours setting forth road grades and determining of drainage on the surface.

(b) In addition to the work described above, a land surveyor may, for subdivisions only, prepare plats, plans, and profiles for roads, storm drainage and sanitary sewer extensions where such work involves the use and application of standards prescribed by local or state authorities, provided the land surveyor passes an examination given by the Board in addition to that provided for the licensing of land surveyors under paragraph (a) . . . [§ 54-17.1 Code of Virginia \(1982\)](#).

My review of the statutes of the various states supports a conclusion that there is no implicit authority for land surveyors to perform incidental drainage design work. Those jurisdictions which have permitted such work have expressly provided for such activities by statute.

It is my understanding that in past years, the Board has not construed the definition of 'practice of land surveying' in Section 40-1-10, South Carolina Code of Laws (1976) to include incidental drainage work. In the absence of such longstanding administrative interpretation, an interpretation by the Board at this point would not have great weight on this question. See, [Etiwan Fertilizer Co. v. South Carolina Tax Commission](#), 217 S.C. 354, 60 S.E.2d 682 (1950). Moreover, it is my opinion that the [Section 40-21-10\(7\)](#) is clear and unambiguous as to what acts a land surveyor can perform so as to preclude any construction by the Board.

A statute is open to construction only where the language used therein requires interpretation or may reasonably be considered ambiguous. Thus, where no ambiguity appears, it has been presumed conclusively that the clear and explicit terms of a statute express the legislative intention. 73 Am. Jur. 2d, [Statutes](#), § 194 (1974); see, [Jones v. S. C. State Highway Department](#), 247 S.C. 132, 146 S.E.2d 166 (1966); [Harling v. Board of Commissioners of Police Insurance and Annuity Fund](#), 205 S.C. 319, 31 S.E.2d 319 (1944).

*3 Therefore, it is my advice that the Board cannot construe [Section 40-21-10\(7\)](#) to permit land surveyors to perform incidental drainage work. To attempt to materially add to this statute by adopting a rule or an administrative interpretation of the statute in question would exceed the powers granted to the Board by the Legislature. [South Carolina Tax Commission v. South Carolina Tax Board of Review](#), 278 S.C. 556, 299 S.E.2d 489 (1983); [Brooks v. South Carolina State Board of Funeral Service](#), 271 S.C. 457, 247 S.E.2d 820 (1918).

This advice is further supported by the fact, as I am advised, that the Board's land surveyor's examination in the past has not tested, to any extent, the knowledge of applicants on drainage design. Therefore, the Board has no ability to insure the public's health, safety and welfare with regard to present licensees. If the Board desires to broaden the permissible activities of land surveyors, it should pursue a legislative amendment specifically authorizing this work. The Board might consider a two-tier license classification as used in Maryland, i.e., land surveyor and property line surveyor. The former can perform drainage design work but the latter cannot. Persons presently holding a license who desire to perform drainage design work could be given this new separate classification upon completion of appropriate testing or other requirements as imposed by the new legislation.

I hope this will be of some assistance to you. If you should have further questions, please advise.

Very truly yours,

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Senior Assistant Attorney General

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